In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1052

BEN SIDNEY and MARY LEWIS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners and three co-defendants were convicted by a jury in the United States District Court for the Northern District of Mississippi of conspiracy and substantive Dyer Act violations. The court of appeals affirmed (Pet. App. A).

Petitioners seek review of the sufficiency of the evidence to sustain their conviction of conspiracy to violate the Dyer Act. This evidence was carefully considered by the court below, which found it suffi-

client. We rely upon the court's opinion. As petitioners conceded in the court of appeals, the claim of error in the denial of a severance is without merit if the evidence sustains the conspiracy count.

The only other claim of error is that it was improper to admit evidence of overt acts not alleged by the indictment as overt acts. This claim is without merit. *Matthews* v. *United States*, 407 F. 2d 1371 (C.A. 5); *Finley* v. *United States*, 271 F. 2d 777 (C.A. 5), certiorari denied, 362 U.S. 979; *Culp* v. *United States*, 131 F. 2d 93 (C.A. 8); *Brulay* v. *United States*, 383 F. 2d 345 (C.A. 9), certiorari denied, 389 U.S. 986.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1971.